

Supreme Court of the United States

TERM 1971

No. 71-564

DISTRICT OF COLUMBIA, *Petitioner,*

v.

MELVIN CARTER, *Respondent.*

Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

I N D E X

	PAGE
Index	1
and Demand for Jury Trial	2
Defendant District of Columbia to Dismiss the Complaint	4
Amend Complaint	5
Court dated April 17, 1969	5
Court dated April 25, 1969	6
Court dated May 15, 1969	6
of Complaint	7

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 339-69

MELVIN CARTER

v.

JOHN R. CARLSON, ERNEST J. PRETE, JOHN B. LAYTON,
THE DISTRICT OF COLUMBIA

CIVIL DOCKET

DATE	PROCEEDINGS
1969	
Feb 12	Complaint, appearance Jury Demand filed
• • • • •	
Mar 6	Motion of deft. #4 to dismiss complaint; c/m 3-6; P&A; M.C.; appearance of Charles T. Duncan, John A. Earnest and Madison McCulloch. filed
• • • • •	
Mar 17	Motion of pltf. to amend complaint; P&A; c/m 3-13; M.C. filed
• • • • •	
Apr 17	Order amending complaint, paragraph 3. (N) McGuire, J.
Apr 25	Order granting motion of deft., District of Co- lumbia, to dismiss complaint. (N) McGuire, J.

DATE	PROCEEDINGS
May 15	Order granting motion to dismiss complaint as to deft., District of Columbia; judgment for deft., District of Columbia vs. pltf. Melvin Carter. (N) McGuire, J.
May 27	Notice of appeal of pltf, from order of 5-15; deposit by Kaplan \$5.00 (copy mailed to Madison McCulloch). filed
1970	
June 19	Amended complaint; c/m 6-19 filed

[Filed February 12, 1969]

COMPLAINT AND DEMAND FOR JURY TRIAL
(Assault and Battery; Deprivation of Civil
Rights; Negligence)

1. Plaintiff is a resident of the District of Columbia; the defendants are residents of and/or are found in the District of Columbia; and the actions complained of herein occurred in the District of Columbia. The amount of controversy exceeds \$10,000.00, exclusive of interest and costs. Jurisdiction of this Court is invoked under D.C. Code Sec.11-521 and 11-102, and under the Civil Rights Act of 1871, 42 U.S. Code Sec.1983, and under the Judicial Code, 28 U.S. Code, Sec. 1343.

2. At all times relevant to this action, defendant John R. Carlson was employed by and acting as a police officer of

the Metropolitan Police Department of the defendant District of Columbia, and subject to the control and supervision of the other defendants; defendant Ernest J. Prete was a Captain of the Metropolitan Police Department in charge of the Ninth Police Precinct to which defendant Carlson was assigned; and defendant John B. Layton was Chief of the Metropolitan Police Department. Defendants Prete and Layton and the District of Columbia were under a duty to train, instruct, supervise and control defendant Carlson in the performance of his duties as a police officer.

3. On or about August 19, 1968, the defendant Carlson, in a restaurant known as "Paula's Cafe" located at 1427 H Street, N.E., in the District of Columbia, acting under color of law and in his capacity as a police officer, and misusing his authority, with full knowledge that his actions were wrongful, without justification and unlawful, did violently seize and punch plaintiff, and did for some time continue to punch plaintiff in and about the face, using brass knuckles, and while plaintiff was being physically restrained by two other police officers.

4. Plaintiff alleges in the alternative that the actions of defendant Carlson set forth in Paragraph 3. were negligent.

5. Defendants Prete, Layton and the District of Columbia negligently failed in their duty to train, instruct, supervise and control defendant Carlson in the proper performance of his duties as a police officer of the Metropolitan Police Department of the District of Columbia, and, specifically, negligently failed to train, instruct, supervise and control defendant Carlson:

- (a) In dealing with suspected disorderly persons;
- (b) In the circumstances under which a police officer should or should not make an arrest; and
- (c) In the circumstances and methods by which a police officer is authorized to use force in making an arrest.

6. As a proximate result of the unlawful, wrongful and malicious, or, in the alternative, negligent actions of defendant Carlson, and as a proximate result of the negligent failures of the other defendants to perform their duties, all described in this complaint, the plaintiff sustained physical injury, pain, suffering, mental anguish, humiliation, and deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States; and the plaintiff suffered a loss of earnings and expenses.

WHEREFORE, the plaintiff demands judgment in the amount of \$5,000.00 as compensatory damages, and \$10,000.00 as exemplary damages.

Plaintiff requests trial by jury on all issues.

• • • • •

[Filed March 6, 1969]

MOTION OF DEFENDANT DISTRICT OF COLUMBIA TO DISMISS THE COMPLAINT

The defendant District of Columbia moves the Court to dismiss the complaint on the following grounds:

1. The complaint fails to state a claim against this defendant upon which relief can be granted.
2. In the maintenance of a police department, the District of Columbia is engaged in the performance of a governmental function and, therefore, it is not liable for negligence which may occur during the performance of said function.

[Filed March 17, 1969]

MOTION TO AMEND COMPLAINT

The plaintiff, Melvin Carter, moves for leave to amend his Complaint, by adding the following language at the end of paragraph 3. thereof:

"..., and without justification or probable cause, arrested the plaintiff."

[Filed April 17, 1969]

ORDER

Upon consideration of the motion of plaintiff, Melvin Carter, to amend the complaint herein, and the points and authorities filed in support thereof, and no opposition having been filed thereto, it is, by the Court, this 17th day of April, 1969,

ORDERED, that the complaint herein be amended so as to include the following language at the end of paragraph 3. thereof, to wit:

"..., and without justification or probable cause arrested the plaintiff."

/s/ MATTHEW F. MCGUIRE
Judge

[Filed April 25, 1969]

ORDER

Upon consideration of the motion of Defendant District of Columbia to dismiss the complaint, of the points and authorities filed in support thereof and in opposition thereto, and of oral argument by and on behalf of the parties in open court, it is, by the court, this 25th day of April, 1969,

ORDERED: That the motion to dismiss the complaint be, and the same is, hereby granted.

/s/ **MATTHEW F. McGUIRE**
Judge

[Filed May 15, 1969]

ORDER

The plaintiff, Melvin Carter, moves the Court to revise the Order of April 25, 1969, dismissing this action as to the defendant, District of Columbia, to read as follows:

ORDERED, that the motion to dismiss the complaint be, and the same is, hereby granted, and there being no just reason for delay, the Clerk is hereby directed to enter final judgment for the said defendant.

/s/ **MATTHEW F. McGUIRE**
Judge

[Filed June 19, 1970]

AMENDMENT OF COMPLAINT

The plaintiff, Melvin Carter, hereby amends his complaint by deleting paragraph 5 and by substituting therefore the following paragraph 5:

"5. . . defendants Prete and Layton and the District of Columbia negligently failed in their duty to a) train and instruct defendant Carlson in the proper performance of his duties as a police officer of the Metropolitan Police Department of the District of Columbia, and, specifically, negligently failed to instruct and train defendant Carlson:

1) in how to deal with suspected disorderly persons;

2) in the circumstances under which a police officer should or should not make an arrest;

3) in the manner in which and techniques by which an arrest should be made;

4) to abstain from the use of such dangerous and unauthorized weapons as brass knuckles;

5) to abstain from using unnecessary force in arresting unarmed persons; and

b) to supervise and control defendant Carlson in the proper performance of his duties as a police officer, and, specifically, negligently failed to supervise and control defendant Carlson:

1) against using unnecessary force and violence in making arrests, although said defendants knew or in the exercise of reasonable care would have known that defendant Carlson was prone to use such force;

2) against using brass knuckles to strike persons being placed under arrest, although said defendants knew or by the exercise of reasonable care would have known that defendant Carlson was prone to such use."

The opinion of the Court of Appeals is contained in Appendix A to the certiorari petition. The judgment of that Court is contained in Appendix C to the certiorari petition.

Supreme Court of the United States

No. 71-564 --, October Term, 19

District of Columbia,

Petitioner,

v.

Melvin Carter

ORDER ALLOWING CERTIORARI. Filed January 10 -----, 19 72.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia . Circuit is granted.